

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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| HERBERT T. KING, On Behalf of Himself<br>and All Others Similarly Situated, | : | Civil Action No.  |
|   | : |   |
| Plaintiff,  | : | COMPLAINT FOR VIOLATION OF THE<br>FEDERAL SECURITIES LAWS |
|   | : |   |
| vs.   | : |   |
|   | : |   |
| EASTMAN KODAK COMPANY, DANIEL<br>A. CARP, and ROBERT H. BRUST,              | : |   |
|   | : |   |
| Defendants.   | : |   |
|   | : |   |
|   | : | <u>DEMAND FOR JURY TRIAL</u>                              |

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## SUMMARY AND OVERVIEW

1. This is a securities class action on behalf of all purchasers of the common stock of the Eastman Kodak Company (“Kodak” or the “Company”) between April 23, 2003 and September 25, 2003 (the “Class Period”), against Kodak and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

2. Kodak engages in the developing, manufacturing and marketing of traditional and digital imaging products, services and products for consumers, professionals, healthcare providers, the entertainment industry and other commercial customers.

3. On April 23, 2003, the Company provided Q2 2003 guidance, stating that *‘if current trends continue into the second quarter, it is possible that second-quarter operational earnings could fall into the range of 60 cents per share to 80 cents per share.’* Though defendants continued to receive adverse information throughout the quarter confirming that the Company would fail to meet these estimates, defendants did not disclose until June 18, 2003 that the Company would badly miss its projections – reporting operating earnings in the range of only \$0.25-\$0.35 per share, half of its projected earnings. On this news, the Company’s shares plunged by 10%, a market cap loss of more than \$922 million in a single day on very high trading volume.

4. On July 23, 2003, the Company backtracked on its previous bad news, stating the operating earnings actually came in for the Q2 2003 at \$0.39 per share. On this and other reassuring statements, the Company’s stock price traded backup approximately 11%.

5. However, on September 25, 2003, defendants shocked the market by announcing that the Company’s attempt to continue operating under its then-existing business model had been failing throughout the Class Period. Rather than expanding film sales into China and other markets, defendants finally conceded they would abandon all future investments in film in favor of digital

technology. As a result of operating difficulties, the Company would be forced cut its historic dividend by 72%.

6. On this news the Company's stock price plummeted by 18% to its 18 year-low on September 25, 2003. The Company's corporate debt ratings were cut by S&P and Moody's to the lowest investment grade rank. The Company's stock ratings were slashed and the position the Company had enjoyed on the Dow Jones Industrial Average since 1930 was threatened.

7. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Kodak's unpaid accounts receivable had risen materially in Q2 2003 (materially lowering operating cash flow to a negative \$53 million in Q2 2003 compared with a positive \$302 million in Q2 2002);

(b) The Company's operating income was coming in at 50% of defendants' projections (resulting in Q2 2003 operating income of \$0.39 per share, approximately half of the Company's April 23, 2003 guidance of \$0.60-\$0.80 per share);

(c) The Company's restructuring charges were materially exceeding previously disclosed levels (requiring the Company to take additional charges for restructuring expenses in Q2 2003);

(d) Asian consumer film and paper sales were being much more adversely affected by severe acute respiratory syndrome ("SARS") in the Company's Asian markets than Kodak had budgeted for or led investors to believe;

(e) The Company's transition from silver halide based technology to digital technologies was having a dramatic adverse effect on its profitability by reducing high-margin film sales;

(f) The Company was losing more ground to Fuji in U.S. film sales than defendants had previously led investors to believe, resulting in severe losses in market share;

(g) Competition with Fuji was requiring defendants to slash prices, cutting further into the Company's gross profit margins; and

(h) The Company's internal controls were deficient, preventing it from formulating reliable forecasts.

8. As a result of the defendants' false statements, Kodak's stock price traded at inflated levels during the Class Period, increasing to as high as \$32 per share on June 17, 2003, permitting defendants to sell \$550 million worth of debt at inflated prices and to justify the payment of extraordinary 450% increases in the cash portion of defendants' incentive compensation for fiscal 2002. Defendants' Class Period false and misleading statements also mollified investor consternation long enough to prevent the Company's disgruntled institutional investors from taking steps at the 2003 annual meeting of shareholders to reign in years of excessive executive compensation at Kodak or to assume control over the Kodak Board of Directors.

### **JURISDICTION AND VENUE**

9. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5.

10. Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

### **THE PARTIES**

11. Plaintiff Herbert T. King, purchased Kodak publicly traded securities as described in the attached certification and was damaged thereby.

12. Defendant Kodak engages in the developing, manufacturing and marketing of traditional and digital imaging products, and services and products for consumers, professionals, healthcare providers, the entertainment industry and other commercial customers.

13. Defendant Daniel A. Carp (“Carp”) is the Company’s Chairman and CEO. For fiscal 2002, Carp received a cash incentive bonus of over \$2.3 million based on the Company’s reported fiscal 2002 financial results and the perception that the Company would continue to be profitable in 2003.

14. Defendant Robert H. Brust (“Brust”) is the Company’s Chief Financial Officer. For fiscal 2002, Brust received a cash incentive bonus of nearly \$670,000 based on the Company’s reported fiscal 2002 financial results and the perception that the Company would continue to be profitable in 2003.

15. The individuals named as defendants in ¶¶13-14 are referred to herein as the “Individual Defendants.” The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Kodak’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements

pleaded herein at ¶¶44-46, 50-51 and 53, as those statements were each “group-published” information, the result of the collective actions of the Individual Defendants.

### **BACKGROUND**

16. In 1888, George Eastman of Rochester New York developed and marketed the first Kodak camera, a simple black box about the size of a brick which came preloaded with enough film for 100 exposures and sold for \$25. Once the film had been used, owners returned the camera to the factory, where the pictures were printed and the camera reloaded and returned. In 1892, Eastman renamed his company, then known as Eastman Dry Plate Company, the Eastman Kodak Company.

17. By the time of George Eastman's death on March 14, 1932, Kodak was the world's pre-eminent photographic firm. Still based in Rochester, the Company had plants in numerous countries, including Canada, and its worldwide employment was more than 20,000 and climbing. Kodak unveiled the Brownie Starmatic camera in 1957 and sold more than 10 million “Brownie’s” over the next five years. In 1963, the Company introduced its line of Instamatic cameras, producing more than 50 million by 1970. By 1966, Kodak sales topped \$4 billion a year and its workforce passed the 100,000 mark. The Company’s employment would peak at 136,000 before beginning a steady decline in the early 1980s.

18. Kodak’s momentum began to subside in the early 1980s and recession forced layoffs. During the 1980s, Kodak also diversified, moving into areas far removed from its core business, such as biotechnology, pharmaceuticals and copiers. The Company spent much of the 1990s shedding those investments. When the economy soured again in the early 1990s, Kodak made further staff reductions.

19. During the 1990s, Japanese film giant Fuji made aggressive moves into Kodak's North American market. Fuji built a plant in South Carolina and flooded the U.S. market with quality film at prices that undercut Kodak. Meanwhile, as Kodak fell into a slump in its own area of

expertise, the Company began spinning out products such as disc photography, photo CDs and APS (Advanced Photo System) that flopped in the marketplace. All the while, the onrushing train of digital photo technology was gaining momentum, posing a devastating threat to Kodak's annuity: film. Kodak struggled to adapt but layoffs became almost an annual event. The constant layoffs had a demoralizing effect on Kodak's workforce and the Rochester community.

20. As a result of this confluence of events, the Company's sales stagnated and its profits deteriorated between 1995 and 2004:

**Kodak's Financial Performance 1995 - 2004**

| <b>YEAR</b> | <b>SALES</b> | <b>CHANGE</b> | <b>EARNINGS</b> | <b>CHANGE</b> |
|-------------|--------------|---------------|-----------------|---------------|
| 1995        | \$15 B       | +10%          | \$1.4 B         | +151%         |
| 1996        | \$16 B       | +7%           | \$1.4 B         | -             |
| 1997        | \$14.5 B     | -3%           | \$5 M           | -100%         |
| 1998        | \$13.4 B     | -8%           | \$1.3 B         | +2500%        |
| 1999        | \$14 B       | +4%           | \$1.3 B         | -             |
| 2000        | \$13.8 B     | -1%           | \$1.4 B         | +8%           |
| 2001        | \$13 B       | -6%           | \$76 M          | -95%          |
| 2002        | \$12.5 B     | -4%           | \$770 M         | +913%         |
| 2003        | \$12.9 B     | +3%           | \$253 M         | -67%          |
| 2004        | \$13.5 B     | +5%           | \$556 M         | +120%         |

**FRAUDULENT SCHEME AND COURSE OF BUSINESS**

21. Each defendant is liable for (i) making false statements, *or* (ii) failing to disclose adverse facts known to him about Kodak. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Kodak common stock was a success, as it (i) deceived the investing public regarding Kodak's prospects and business; (ii) artificially inflated the price of Kodak common stock; (iii) allowed defendants to obtain larger bonuses; (iv) allowed defendants to arrange to sell and actually sell \$550 million worth of Kodak debt at artificially inflated prices; (v) allowed defendants to defeat one shareholder proposal that would have adversely affected management's compensation; and (vi) caused plaintiff and other members of the Class to purchase Kodak common stock at inflated prices.

## SCIENTER

22. In addition to the above-described involvement, each Individual Defendant had knowledge of Kodak's problems and was motivated to conceal such problems. Brust, as CFO, was responsible for financial reporting and communications with the market. Many of the internal reports showing Kodak's forecasted and actual growth were prepared by the finance department under Brust's direction. Defendant Carp, as CEO and Chairman, was responsible for the financial results and press releases issued by the Company. Each Individual Defendant sought to demonstrate that he could lead the Company successfully and generate the growth expected by the market.

23. Defendants were motivated to engage in the fraudulent practices alleged herein in order to obtain financing for the Company and to justify their 450% increases in the cash portion of their incentive compensation. The Board's Compensation Committee would have been forced to ratchet down this excessive incentive compensation in light of the adverse business trends defendants were aware of but concealed in advance of the May 2003 annual meeting, if the adverse information had been made publicly available. Defendants concealed Kodak's adverse operating condition and business fundamentals to prevent further shareholder scrutiny at the May 2003 annual meeting of shareholders.

24. Despite the Company's dismal financial performance in the late 90s and early 00s, Kodak's five highest compensated executives continued to handsomely compensate themselves – especially after 2001 when the cash portion of their bonuses consistently exceeded their salaries by well over 100% – despite the fact that, as detailed above in ¶20, Kodak was not earning a fraction of its previous profits:

### Kodak Executives' Cash Compensation 1995 - 2004

| YEAR | AGGREGATE CASH BONUSES OF TOP FIVE EXECUTIVES | PERCENTAGE OF AGGREGATE SALARIES OF TOP FIVE EXECUTIVES | AGGREGATE SALARIES PAID TO TOP FIVE EXECUTIVES | AVERAGE CASH COMPENSATION PAID TO TOP FIVE EXECUTIVES | CHANGE |
|------|---|---|--|---|--------|
| 1995 | \$4.6 M                                       | <b>110%</b>   | \$4.2 M  | <b>\$1.8 M</b>  | +20%   |
| 1996 | \$4.2 M                                       | <b>100%</b>   | \$4.2 M  | <b>\$1.7 M</b>  | -6%    |
| 1997 | \$119,568                                     | <b>2.8%</b>   | \$4.3 M  | <b>\$.88 M</b>  | -48%   |
| 1998 | \$3.1 M                                       | <b>67%</b>  | \$4.6 M  | <b>\$1.5 M</b>  | +70%   |
| 1999 | \$4.9 M                                       | <b>111%</b>   | \$4.4 M  | <b>\$1.9 M</b>  | +27%   |
| 2000 | \$2.5 M                                       | <b>51%</b>  | \$4.9 M  | <b>\$1.5 M</b>  | -21%   |
| 2001 | \$1.7 M                                       | <b>49%</b>  | \$3.5 M  | <b>\$1 M</b>  | -33%   |
| 2002 | \$4.9 M                                       | <b>144%</b>   | \$3.4 M  | <b>\$1.7 M</b>  | +70%   |
| 2003 | \$4.7 M                                       | <b>138%</b>   | \$3.4 M  | <b>\$1.6 M</b>  | -6%    |
| 2004 | \$5.3 M                                       | <b>129%</b>   | \$4.1 M  | <b>\$1.9 M</b>  | +19%   |

25. Following the declines in the market price of Kodak's common stock, the Kodak executives' stock options became virtually worthless. The exercise price of stock options is equal to the price of the issuers' stock on the day the options are granted, and with Kodak's stock price having materially declined year after year, many of the executives' options were well under water. But-for their ability to cause Kodak to pay them exorbitant bonuses, the pay of Kodak's senior executives was virtually capped at salary plus other compensation, including cash bonuses. As such, year after year defendants caused Kodak to pay them millions and millions of dollars in cash bonuses based the previous years' financial results and the Company's expected profitability going forward. Kodak's executives wielded tremendous power over the Company's Board of Directors and the Board rubber-stamped the bonuses years after year.

26. On May 14, 2001, *Fortune* magazine published a story entitled "The Dirty Half-Dozen: America's Worst Boards; For those who track bad corporate governance, the year 2000 provided an embarrassment of riches." As to Kodak, the *Fortune* article stated:

Most observers we spoke to gave Kodak's board an "F." Why? ***Entrenched directors, a history of outrageous pay, and a pronounced inability to adapt to changing times.*** For four straight years, the majority of shareholders who voted have chosen to eliminate Kodak's staggered board (in which only a few of the directors are elected

each year), and for four straight years the company has ignored them; company bylaws state that 80% of shares outstanding are needed to change the way the board is elected. ***Then there are Kodak's widely criticized compensation practices. In 1999 the board made economic profit/economic value added (EVA) the sole performance measure to determine the size of management's bonus pool. But it quickly soured on the EVA standard when it resulted in bonuses being slashed in 2000; Chairman/CEO Dan Carp's bonus was chopped almost in half. So in Kodak's latest proxy, the board's compensation committee has proposed adding 19 new performance measures to the bonus plan, including revenue and cost reduction. The committee can pick and choose which performance measure to use in any given year, so management is virtually guaranteed a cushy bonus. All this while Kodak's stock recently closed about 40% off its 52-week high.***

27. Thus, by the time the Class Period started in the spring of 2003, in advance of the 2003 annual meeting of shareholders, defendants were under tremendous pressure from the Company's shareholder constituency. Kodak's large institutional investors, in particular, were agitating for changes at Kodak, including taking steps to reign in executive compensation and limit management's control over the selection and appointment of the members of Kodak's Board of Directors, which was supposed to be overseeing management, rather than vice versa.

28. In fact, almost every year between 1996 and 2000, Kodak shareholders owning significant amounts of its common stock had submitted proposals either asking that the Kodak Board be "declassified," which would have required that each director stand for election each year (rather than serving for three-year terms), and/or attacking the Company's executive compensation practices. Despite the fact that all of these shareholder proposals received wide support and the board declassification proposals were actually passed on repeated occasions, Kodak's management and the Board it dominated and controlled refused to implement any of the shareholder proposals:

| <b>SHAREHOLDER PROPOSAL</b>   | <b>BOARD RECOMMENDATION TO SHAREHOLDERS</b> | <b>RESULT OF SHAREHOLDER VOTE</b>                            | <b>IMPLEMENTED</b> |
|---|---|--|--------------------|
| <b>1996</b>   |   |  |                    |
| Institute cumulative voting for all classes of stock.   | REJECT                                      | DEFEATED   | NO                 |
| Discontinue all options, SAR's, rights to purchase, etc. of stock for management and directors. | REJECT                                      | DEFEATED   | NO                 |
|   |   |  |                    |
| <b>1997</b>   |   |  |                    |
| Declassify Board.   | REJECT                                      | PASSED   | NO                 |
|   |   |  |                    |
| <b>1998</b>   |   |  |                    |
| Complete study of Kodak's executive compensation.   | REJECT                                      | DEFEATED   | NO                 |
| Declassify of Board   | NONE  | PASSED   | NO                 |
|   |   |  |                    |
| <b>1999</b>   |   |  |                    |
| Declassify Board.   | REJECT                                      | PASSED   | NO                 |
| Complete study of Kodak's executive compensation.   | REJECT                                      | DEFEATED   | NO                 |
|   |   |  |                    |
| <b>2000</b>   |   |  |                    |
| Discontinue all options, SAR's, rights to purchase, etc. of stock for management and directors. | REJECT                                      | COMPANY REFUSED TO PERMIT A SHAREHOLDER VOTE ON THE PROPOSAL |                    |
| Declassify Board.   | REJECT                                      | PASSED   | NO                 |
| Complete study of Kodak's executive compensation.   | REJECT                                      | DEFEATED   | NO                 |

29. Kodak executives went on the offensive against the Company's vocal shareholder constituency and there were several shareholder proposals submitted between 1996 and 2002 which Kodak and its executives simply refused to present to shareholders at the Company's annual meetings for various reasons, including:

(a) Much like the shareholder proposals submitted in 1996 and 2000 asking to discontinue stock-related compensation to executives, a similar proposal was also submitted in

advance of the 1999 annual meeting but the Company refused to present it to shareholders claiming it conflicted with management's own proposal to adopt a new stock option plan and thus would confuse shareholders.

(b) A shareholder tried to submit additional shareholder proposals for review at the 2000 annual meeting which would have restricted executive control over board composition and executive compensation. The Company initially refused to present these proposals to shareholders stating they were compound and had multiple parts in violation of proxy rules. After the shareholder revised the proposal to comply with the proxy rules, the Company ultimately refused stating it addressed compensation issues which were "ordinary business operations" and off limits to shareholder scrutiny.

(c) A Kodak shareholder submitted a proposal designed to address Kodak's executive compensation practices for a vote at the 2001 annual meeting. However, Kodak refused to submit the proposal to shareholders stating that because Kodak's stock traded at below \$40 per share for ten days in October 2000, the value of the shareholders' Kodak stock was worth less than \$2,000 on those ten days, disqualifying the shareholder from submitting a proposal at the 2001 meeting.

(d) The same large institutional investor who had for the seven prior years submitted a shareholder proposal asking for declassification of the Kodak Board attempted to once again submit that proposal for shareholder consideration at the 2001 annual meeting. However, the Company, without contesting that the large pension fund owned at least \$2,000 worth of Kodak stock, rejected the proposal on a technicality claiming documentary support of shareholdings was inadequate. Despite repeated efforts by the institutional investor to provide additional documentation, Kodak refused to submit the declassification proposal to shareholders in 2001.

30. Through manipulation of the corporate machinery, Kodak's executives prevented shareholders from seeing, much less voting on, proposals designed to curb their influence over the Board and executive compensation at the 2001 and 2002 annual shareholder meetings. But once again, in advance of the 2003 annual meeting, multiple shareholder proposals addressing executive compensation and board influence were submitted. Defendants successfully rejected at least two such shareholder proposals:

(a) One proposal submitted for shareholder consideration would have provided that "the Top Salary be 'capped' at \$1,000,000.00 to include bonus, perks, stock options, and that this be pro-rated each year." The Company and its lawyers refused to present the proposal to shareholders claiming that it was "vague and ambiguous" and that "neither the shareholders nor the company's board of directors would be able to determine, with any reasonable amount of certainty, what action or measures would be taken if the proposal were implemented."

(b) Kodak rejected a proposal submitted by a large institutional investor which would have amended the Company's bylaws to permit shareholders owning 3% or more of the Company's stock to place competing director nominees on the slate of directors at annual meetings. Kodak's executives refused to submit the proposal to shareholders claiming it could lead to contested board elections – the precise result the institutional investor undoubtedly sought.

31. Another proposal submitted by a large institutional investor for inclusion in the proxy statement to shareholders for the 2003 annual meeting would have required that all future stock option grants to senior executives be performance based. Initially rejecting the proposal, Kodak's executives proffered that the Company lacked the power to implement the proposal. When the Securities and Exchange Commission ("SEC") disagreed, Kodak agreed to submit the proposal to

shareholders. However, once again the Board recommended that shareholders reject the proposal stating the Company's then-current method of awarding options "works well."

### **DEFENDANTS' PRE-CLASS PERIOD FALSE AND MISLEADING STATEMENTS**

32. On October 17, 2002, the Company issued a press release entitled "Kodak Says 3rd-Qtr Earnings to Exceed Guidance; Reported Earnings Expected at 1.15 dollars per share, Operational EPS at 1.04 dollars." The press release stated in relevant part that:

Eastman Kodak Company said today that it expects to generate third-quarter earnings of \$1.15 per share on a reported basis, or \$1.04 per share excluding one-time items, *driven by a lower cost structure and continued manufacturing productivity improvements, resulting in higher profit margins.*

Sales are expected to be up slightly compared with the third quarter of 2001 because of foreign exchange benefits.

Kodak previously said that operational earnings in the quarter would range between 70 and 80 cents per share. In the year-ago quarter, Kodak earned 33 cents per share on a reported basis, and 52 cents per share excluding restructuring charges and other asset write-downs.

The company will release its complete third-quarter 2002 results on Oct. 24.

The reported earnings of \$1.15 per share, in accordance with Generally Accepted Accounting Principles in the U.S. (U.S. GAAP), reflect a number of one-time items that contributed 11 cents per share to earnings. The items include the restructuring of photofinishing operations in Japan and venture capital write-offs, more than offset by a one-time tax benefit related to the company's Japanese photofinishing operations and adjustments related to previously announced restructuring programs.

*The greater-than-expected third-quarter earnings primarily reflect higher gross profit of 38.4%, in contrast to the anticipated sequential decline in gross profit previously forecasted. Gross margins, for example, were higher than expected in Health Imaging and Digital & Applied Imaging. Other factors contributing to the profit performance include lower administrative costs and interest expense, and a reduction in the rate of incentive compensation accruals because revenue to date has not grown as expected. Kodak's sales of consumer film on a volume basis to U.S. retailers increased 3%, while revenue fell 3% as price declines more than offset the volume gain. The volume increase reflects higher U.S. market share and easier year-over-year comparisons. Industry-wide, sales to U.S. consumers, on a volume basis, declined 3%.*

*"We have been cautious throughout the year in projecting our earnings because the economic visibility has been so poor," said Kodak Chairman and Chief Executive Officer Daniel A. Carp. "In the third quarter, we were pleasantly surprised by the increased productivity across the company."*

*Despite the uncertainty of forecasting in the current economic environment, Kodak expects fourth-quarter operational earnings of 60 to 70 cents per share. The forecast reflects a traditional decline in gross profit, which tends to be at its seasonal low in the fourth quarter of each year, dropping historically about 4 percentage points below that of the third quarter. Kodak also expects flat sales in the fourth quarter and higher planned investments in the Health Imaging business. As a result, the company expects full-year operational earnings of \$2.62 to \$2.72 per share.*

"For the balance of 2002, we expect the economy to remain weak," Carp said. "In such tough times, we remain committed to doing those things that are within our control: generating cash, cutting costs, reducing debt, improving manufacturing productivity and introducing new products - such as Kodak Perfect Touch, a service launched this month that digitally processes film so consumers get more great pictures. *Through these actions, we expect to continue the profit improvement we've delivered so far this year.*"

33. On this news the Company's stock price traded up over 11% from its close of \$30.10 per share on October 16, 2002 to trade at over \$34 per share in intraday trading on October 17, 2002.

34. On January 22, 2003, Carp was interviewed by *Bloomberg's* Brian Sullivan following the Company's announcement of its Q4 2002 and fiscal 2002 financial results. Defending the Company's performance, Carp told *Bloomberg*:

We had a good quarter, you know. We set out at the beginning of the quarter to deliver somewhere between 60 and 70 cents a share. We hit that right in the middle of it. *So we're happy with how 2002 worked out and now we're making sure we're going to have a good 2003, given the economic environment that's out there.*

35. As to how the Company was fairing in competition with Fuji, Carp told Sullivan it was "just good old-fashioned competition, and we're doing fine. *We've held our share for the fifth straight year in the United States, and our shares are at very high levels.*"

36. Carp went onto explain concerning the Company's continued plans to rely heavily on its traditional core film business that: "the film business is still a very good business, 700 million-

plus rolls, for example, taken in the United States in 2002. *And so it's a good business and it'll continue a good business for years to come.*"

37. On March 14, 2003, Kodak filed with the SEC and distributed to shareholders its annual financial report on Form 10-K for the fiscal year ending December 31, 2002. The Company reported that for fiscal 2002 it had achieved \$770 million in net income, or \$2.72 per share, versus \$76 million in net income in 2001, or \$0.28 per share.

38. On March 28, 2003, Kodak filed with the SEC and distributed to shareholders its 2003 Annual Proxy Statement (the "Proxy Statement") inviting shareholders to attend the Company's 2003 Annual Meeting of Shareholders on Wednesday, May 7, 2003, at 10:00 a.m. at the Kodak Theatre, 6801 Hollywood Blvd., Hollywood, California. The Proxy Statement was signed by Kodak's Secretary and Assistant General Counsel, James M. Quinn, at the direction of the Kodak Board of Directors.

39. The Proxy Statement explained that the cash incentive bonuses for executives in fiscal 2002 were discretionary and that factors the Compensation Committee would consider in calculating the bonuses were current business trends expected to affect revenues and earnings, stating that:

*The Compensation Committee may use its discretion to adjust (upward or downward) the amount of the corporate funding pool for any year. Examples of situations where the Compensation Committee may choose to exercise this discretion include unanticipated economic or market changes, extreme currency exchange effects, management of significant workforce issues, significant changes in investable cash flow, inventory turns, receivables, or capital expenditures, or dramatic shifts in customer satisfaction.*

40. The Proxy Statement stated that based on this analysis the Compensation Committee had decided to increase each of its key executive officer's pay by approximately 450%, with Chairman and CEO Carp receiving a \$2.3 million cash bonus for fiscal 2002 versus his 2001 bonus

of \$500,000, and CFO Brust receiving a \$670,000 cash bonus for fiscal 2002 versus his \$151,000 bonus for 2001.

41. The Proxy Statement also recommended that shareholders vote against two shareholder proposals submitted by large institutional shareholders that would adversely affect executive compensation by requiring the Company to index stock option grants and expense stock option compensation. Those proposals, put forth by two large institutional investors, advocated that shareholders adopt proposals requiring that:

(i) “the Board of Directors adopt an executive compensation policy that all future stock option grants to senior executives shall be performance-based. For the purposes of this resolution, a stock option is performance-based if the option exercise price is indexed or linked to an industry peer group stock performance index so that the options have value only to the extent that the Company’s stock price performance exceeds the peer group performance level.”

(ii) “the Company’s Board of Directors establish a policy of expensing in the Company’s annual income statement the costs of all future stock options issued by the Company.”

42. The Board recommended that shareholders reject both proposals, stating the Compensation Committee needed to retain its discretion over the granting of stock options so the Company could retain high-caliber officers and directors and that it did not want to disclose the portion of compensation payable in the form of stock options as an expense. For fiscal 2002, in addition to their cash compensation, Carp and Brust alone would collectively receive as part of their annual compensation packages almost \$1.8 million in stock option grants and over \$4.6 million in restricted stock awards. ***Including stock options as a 2002 expense would have reduced Kodak’s reported net profit by \$105 million, or \$0.36 a share.***

43. Defendants knew the Plumbers & Pipefitters National Pension Fund and the Massachusetts Laborers’ Pension Fund, the proponents of the shareholder proposals, collectively owned almost 30,000 shares of Kodak stock and would wage a formidable proxy contest to convince shareholders to pass these resolutions. Defendants also knew that any shareholder perception that

the Company was paying its executives excessive, unearned compensation would hurt the executive's chances of securing shareholder rejection of the proposals at the annual meeting of shareholders on May 7, 2003. As the Compensation Committee had calculated the executive's raises and incentive compensation based on the Company's perceived financial performance as of March 28, 2003 when the Proxy was issued, it was imperative that defendants continue to report favorable financial conditions through the date of the annual meeting of shareholders set on May 7, 2003.

#### **DEFENDANTS' CLASS PERIOD FALSE AND MISLEADING STATEMENTS**

44. On April 23, 2003, the Company issued a press release entitled "Kodak Reports 1st-Quarter Net Income of 4 Cents Per Share; Sales Rise 1 Percent to \$2.740 Billion." The press release stated in relevant part:

Eastman Kodak Company today said that first-quarter net income, in accordance with Generally Accepted Accounting Principles (GAAP) in the U.S., totaled 4 cents per share and that sales rose 1%.

Kodak's GAAP net income for the quarter included a loss from continuing operations of 1 cent per share and earnings from discontinued operations of 5 cents per share. Excluding the impact of previously announced focused cost reductions and other non-operational items, earnings from continuing operations were 14 cents per share, consistent with the company's forecast.

For the first quarter of 2003:

- Sales totaled \$2.740 billion, an increase of 1% from \$2.706 billion in the first quarter of 2002. Excluding foreign exchange, sales declined 4%.
- The company reported net income of \$12 million, or 4 cents per share, compared with net income of \$39 million, or 13 cents per share, in the first quarter of 2002. The earnings from discontinued operations of \$15 million, or 5 cents per share, in the first quarter of 2003 represent certain tax benefits.
- Earnings from continuing operations, excluding the impact of focused cost reductions and other non-operational items, were \$39 million, or 14 cents per share. The after-tax non-operational items include a charge of \$30 million, or 10 cents per share, related to the previously announced focused cost reductions; a charge of \$13 million, or 5

cents per share, in connection with the acquisition of technology qualifying as in-process research and development activities; a charge of \$7 million, or 3 cents per share, in connection with an intellectual property settlement; and a tax benefit of \$8 million, or 3 cents per share, related to the donation of certain patents. There were no similar significant items in the year-ago quarter.

“In these difficult times, Kodak continues to deliver on its commitment to shareholders by managing well those things within our control and by pursuing our strategies for growth,” said Chairman and Chief Executive Officer Daniel A. Carp. “We contained costs and strengthened the financial position of the company by paying down debt, compared with the year-ago level, and by driving money-saving operational improvements through our Kodak Operating System. We also benefitted from the company’s broad-based product portfolio, as solid demand for Health Imaging and Entertainment Imaging products and services helped offset the reduced demand for consumer film caused by the weak economy.

“Kodak continues to execute on its growth strategies by introducing new products and services that reinforce our heritage as the company driving innovation and ease of use in traditional and digital imaging markets,” Carp said. “The EasyShare Printer Dock 6000, for example, fulfills two of our four strategies: to make digital easier and to generate the increased printing of pictures. The EasyShare LS633 zoom digital camera is the first to use our innovative, award-winning OLED flat-panel display technology, reflecting our strategy to create new businesses in new markets. And the success of our new Vision2 color-negative motion-picture film is an example of our strategy to maximize the value of film. Executing on these strategies today will put Kodak in a better position to accelerate growth when the economy recovers.”

45. With regards to the Company’s Q2 2003, then approximately one-third underway, the

Company stated:

**Earnings Outlook:**

- Significant volatility exists in the company’s operational business estimates for the future. *If current trends continue into the second quarter, it is possible that second-quarter operational earnings could fall into the range of 60 cents per share to 80 cents per share.* However, if a pick-up in consumer film consumption occurs, there could be upside to this estimate. *As a result, Kodak currently expects full-year earnings to come in at the low end of the non-GAAP range of \$2.35 to \$2.95 per share provided by the company in January.*

46. At the earnings conference held that same day, Carp assured investors that:

If *current trends* in the consumer business *continue* into the second quarter, it is possible that the second quarter operating earnings could fall in a range of 60 to 80 cents per share. However, we saw a pick up in consumer film consumption, we would see an upside to this. . . .

Consistent with this view, our full year outlook is now falling at the low end of our \$2.95 to \$2.35 per share operational earnings range that we provided you in January. *It is interesting and also encouraging to note that our second quarter outlook, if one excludes the traditional consumer business from the analysis, is actually forecasted to grow revenues in the 5 to 9% range.* While our traditional consumer markets are experiencing challenging times, I am pleased with our share performance. Our focus on cost and cash and the results of our nontraditional consumer business. Our digital portfolio continues to gain traction in the market with consumer digital cameras continuing their journey toward profitability.

47. On April 24, 2003, the Company filed with the SEC and distributed its Q1 2003 Form 10-Q, reporting the revenues and net income as disclosed in its press release.

48. During May 2003, Kodak issued and sold \$100 million worth of Medium-Term Notes, Series A Floating Rate Notes with a maturity date of November 15, 2005, \$200 million worth of Medium-Term Notes, Series A Floating Rate Notes with a maturity date of November 8, 2004, and \$250 million worth of Medium-Term Notes, Series A Fixed Rate Notes with a maturity date of May 15, 2008.

49. Kodak held its annual meeting of shareholders on May 7, 2003. As to the shareholder proposals:

| SHAREHOLDER PROPOSAL  | BOARD RECOMMENDATION | RESULT OF SHAREHOLDER VOTE | IMPLEMENTED |
|---|----------------------|----------------------------|-------------|
|   |                      |                            |             |
| Adopt requirement that future stock option grants be performance based. | REJECT               | DEFEATED                   | NO          |
| Expensing of stock options.   | REJECT               | PASSED                     | NO          |

50. Defendants would later explain in an SEC filing on July 25, 2003 that despite the fact that the Company's shareholders had overwhelmingly approved the proposal to expense stock options, they would not do so:

The shareholder proposal requesting the expensing of stock options was approved, with 104,410,216 shares voting for, 80,996,183 shares voting against, 6,959,479 shares abstaining, and 40,962,112 non-votes. This shareholder proposal received a majority of the votes cast. The Company's Board of Directors did not oppose the expensing of stock options in principle, but recommended a vote against this proposal because of the absence of a uniform methodology for the expensing of stock options and the lack of comparability arising from the fact that most large companies were not taking this step. The Board of Directors has considered the shareholders' vote, and has concluded that it is advisable to await the issuance of any final rule by the Financial Accounting Standards Board on the subject before taking any action.

51. Suddenly, on June 18, 2003, the Company issued a press release, entitled "Kodak Reduces 2nd-Quarter Earnings Guidance; Operational EPS from Continuing Operations to Total 25 to 35 Cents," which stated in relevant part,

Eastman Kodak Company said today that its second-quarter reported net income, in accordance with Generally Accepted Accounting Principles (GAAP) in the U.S., is expected to be in the range of approximately 5 cents to 25 cents per share. ***Operational earnings from continuing operations are estimated to be 25 cents to 35 cents per share, which is less than the guidance of 60 cents to 80 cents per share that the company provided on April 23.***

Kodak's second-quarter reported net income is expected to be affected by a number of recent non-recurring items, the earnings impact of which cannot in every case be estimated precisely at this time. Included are charges associated with exiting the Phogenix joint venture and certain asset impairments, the execution of previously announced restructuring actions, and agreements reached in connection with licenses to use certain intellectual property, which are expected to total approximately 20 cents to 10 cents per share.

The new operational forecast primarily reflects significantly lower-than-expected sales of consumer film and photographic paper in Asia because of the outbreak of SARS. For example, industrywide sales of consumer film in China during April and May were nearly half of the amount sold during the same two months a year ago.

Sales of consumer film and paper in the U.S. and Europe were also moderately lower than expected, stemming from persistent economic weakness, a

somewhat more competitive pricing environment, and the increased popularity of digital photography. In the U.S., for example, industry wide sales of consumer film at retail fell about 8% in April and May combined compared to the same period a year ago. As a result of reduced film and paper volumes, Kodak's unit manufacturing costs associated with a number of traditional products across the company, as well as photo finishing, were higher than anticipated.

Kodak expects total company sales to be unchanged in the second quarter compared with the second quarter of 2002. Excluding the impact of foreign exchange, the company expects sales to be down approximately 5% compared with the second quarter of 2002.

In the second quarter of 2002, Kodak had reported net income of 97 cents per share, or 85 cents per share excluding a one-time tax benefit of 15 cents and a one-time asset write-down of 3 cents. Sales in the second quarter of 2002 totaled \$3.339 billion.

"As we have said for some time, companies today face external challenges beyond their control," said Kodak Chairman and Chief Executive Officer Daniel Carp. "In April, our guidance assumed that the effect of SARS on picture-taking would be much less than it has turned out to be. The SARS outbreak, as well as concern about geopolitical tensions, is keeping people from participating in activities that foster picture-taking. Travel and leisure spending is weak, for example, and that means fewer pictures are being taken worldwide.

"While many of our commercial operations and our consumer digital business continue to perform relatively well, their success at this point doesn't fully offset the present earnings difficulty that our traditional consumer business is experiencing," Carp said. "In this environment, we will continue to focus on generating cash, strengthening our balance sheet and developing new products and services. We also see a clear need to increase and accelerate our continuous effort to reduce costs, and we will discuss those efforts in more detail when we release our second-quarter earnings report."

Kodak expects that economic weakness, reduced tourism and geopolitical turmoil will continue to affect sales and earnings for the balance of the year. The company will update its plans for guidance for the full year on July 23, when it will release the second-quarter earnings report. An investors' conference call will take place at 11:00 a.m. EDT on July 23, hosted by Robert Brust, Kodak's Chief Financial Officer.

52. Kodak's share price, which had traded at a Class Period high of \$32 per share on June 17, 2003, precipitously fell 10% on this news, closing at \$28.77 per share. Trading volume was over 18 million shares versus the typical daily trading volume average of just 2.4 million shares.

53. On July 23, 2003, the Company issued a press release entitled “Kodak Reports 2nd-Quarter Net Income of 39 Cents Per Share; Sales Unchanged at \$3.352 Billion - EPS from Continuing Operations, Excluding Charges and Other Items, Total 60 Cents.” The press release, designed to mollify investor concerns, stated in relevant part that:

Eastman Kodak Company today said that second-quarter net income, in accordance with Generally Accepted Accounting Principles (GAAP) in the U.S., totaled 39 cents per share and that *sales were unchanged compared with the year-ago period.*

Excluding the impact of previously announced focused cost reductions and *other non-operational items*, earnings from continuing operations were *60 cents per share, higher than the forecast of 25 cents to 35 cents per share that the company issued on June 18. Relative to the June 18 forecast, the actual results primarily reflect a more favorable sales mix of health imaging and traditional consumer products and services. Better-than-expected performance from joint ventures and a lower-than-expected tax rate also contributed to the difference between actual and forecasted results.*

*For the second quarter of 2003:*

- Sales totaled \$3.352 billion, unchanged from the second quarter of 2002. Excluding foreign exchange, sales declined 6%.
- The company reported net income of \$112 million, or 39 cents per share, compared with net income of \$284 million, or 97 cents per share, in the second quarter of 2002.
- Earnings from continuing operations, excluding the impact of focused cost reductions and other non-operational items, were \$172 million, or 60 cents per share. The after-tax non-operational items include a charge of \$36 million, or 13 cents per share, related to the previously announced focused cost reductions; a charge of \$9 million, or 3 cents per share, in connection with the settlement of a patent infringement claim; a charge of \$9 million, or 3 cents per share, in connection with a prior-year acquisition; and a charge of \$6 million, or 2 cents per share, to write down certain assets held for sale following the acquisition of the Burrell companies. In the second quarter of 2002, earnings from continuing operations, excluding non-operational items, totaled \$250 million, or 86 cents per share. The after-tax, non-operational items from the year-ago quarter include a one-time tax benefit totaling 15 cents per share resulting from the closure of a subsidiary, and a one-time write-down of assets associated with venture investments totaling 3 cents per share.

***“We are pleased to report quarterly earnings that are stronger than we had previously expected,” said Kodak Chairman and Chief Executive Officer Daniel A. Carp. “Most of our businesses continue to perform well in a difficult economic environment. We are encouraged by the market's acceptance of the innovative products and services Kodak is creating from our latest computed radiography systems and Vision2 motion-picture film, to the newest EasyShare consumer digital cameras and the well-received EasyShare Printer Dock.”***

“Our traditional consumer film and processing operations continue to face challenges associated with the increasing popularity of digital photography as well as persistent economic weakness, continuing price pressure and an associated decline in travel and tourism,” Carp said. “Consumer adoption of digital photography is growing at a more rapid pace than a year ago, and this is trimming demand for consumer film. At the same time, we are seeing evidence that more consumers want to print their digital photos at retail and at home. This trend presents a huge opportunity for Kodak to generate profitable sales of our market-leading Picture Maker kiosks and inkjet paper, which will help offset declining sales from traditional film.

“Given these developments, we remain cautious about a material upturn in the traditional consumer products and services for the balance of 2003,” Carp said. “In this environment, we remain committed to reducing costs aggressively, strengthening our balance sheet and bringing to market more innovative products for the benefit of our customers.”

54. On this positive news the Company’s stock price rose as much as 11% in intraday trading.

55. On September 3, 2003, the Company announced it would “hold a meeting with the institutional investment community on Thursday, September 25, in New York City” in order to “provide an update on Kodak's strategic direction.”

56. But on September 25, 2003, Carp shocked the market by announcing that the Company’s new strategic direction would require cutting its dividend by 72%. Carp finally conceded that the Company’s film sales would decline 7% per year and that the Company would have to make the investment to switch to digital photography. As even exceptional digital margins are only 5% or less, and Kodak’s film margins had averaged 50%, the market realized that the switch

to digital, which defendants had long proclaimed would not be necessary, would cut deep into the Company's bottom line.

57. On Carp's announcement, the Company's stock price plummeted 18% to \$22.15—an 18-year low – on more than 36 million in volume from its close of \$26.99 on September 24, 2003. The Company's corporate debt ratings with S&P and Moody's were slashed to the bottom level of investment grade causing its debt yields to rise and the market value of its debt to fall. Kodak's position on the Dow Jones Industrial Average was questioned. It was rumored Kodak's removal from the Dow, a position it had held for 30 years, could prompt investors to dump over 7 million of its shares. By Friday September 26, 2003, the Company's stock had fallen to a 23-year low of \$21.40 per share.

58. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Kodak's unpaid accounts receivable had risen materially in Q2 2003 (materially lowering operating cash flow to a negative \$53 million in Q3 2003 compared with a positive \$302 million in Q2 2002);

(b) The Company's operating income was coming in at 50% of defendants' projections (resulting in Q2 2003 operating income of \$0.39 per share, approximately half of the Company's April 23, 2003 guidance of \$0.60-\$0.80 per share);

(c) The Company's restructuring charges were materially exceeding previously disclosed levels (requiring the Company to take additional charges for restructuring expenses in Q2 2003);

(d) Asian consumer film and paper sales were being much more adversely affected by SARS in the Company's Asian markets than Kodak had budgeted for or led investors to believe;

(e) The Company's transition from silver halide based technology to digital technologies was having a dramatic adverse effect on its profitability by reducing high-margin film sales;

(f) The Company was losing more ground to Fuji in U.S. film sales than defendants had previously led investors to believe, resulting in severe losses in market share;

(g) Competition with Fuji was requiring defendants to slash prices, cutting further into the Company's gross profit margins; and

(h) The Company's internal controls were deficient, preventing it from formulating reliable forecasts.

### **LOSS CAUSATION/ECONOMIC LOSS**

59. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Kodak's stock price and operated as a fraud or deceit on Class Period purchasers of Kodak stock by misrepresenting the Company's operating success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the selling success of the Company's products and its internal operations. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Kodak stock fell precipitously as the prior artificial inflation came out of Kodak's stock price. As a result of their purchases of Kodak stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the U.S. federal securities laws.

60. During the Class Period, the defendants presented a misleading picture of Kodak's business and growth prospects. Thus, instead of truthfully disclosing during the Class Period that Kodak's film sales were not as healthy as represented, defendants caused Kodak to falsely forecast future revenues, earnings and profit margins.

61. These false claims of strong future results and the success of the Company's efforts to grow revenues and maintain market share caused and maintained the artificial inflation in Kodak's stock price throughout the Class Period and until the truth was revealed to the market.

62. Defendants' false and misleading statements had the intended effect and caused Kodak stock to trade at artificially inflated levels throughout the Class Period, permitting the Company to sell more than \$550 million worth of debt and insiders to justify the receipt of millions of dollars in cash bonuses.

63. On June 18, 2003, defendants were forced to partially reveal the Company's declining operations and financial status but made further misstatements in order to prevent investors from learning and reacting to the truth about the Company's predicament. Finally, on September 25, 2003, defendants were forced to publicly disclose that Kodak's film business had failed and that they were cutting the Company's historical dividend by 72%. As investors and the market became aware that Kodak's actual business prospects were poorer than represented, which had been obfuscated by defendants, the prior artificial inflation came out of Kodak's stock price, damaging investors.

64. As a direct result of defendants' admissions and the public revelations regarding the truth about Kodak's previous representations and its actual business prospects going forward, Kodak's stock price plummeted from \$31.99 on June 17, 2003 to close at \$28.77 per share on June 18, 2003 (on over 18 million shares in trading volume), a decline of \$3.22 per share or 10%, and from its close of \$26.99 on September 24, 2003 down to \$22.15 per share on September 25, 2003

(on over 36 million shares in trading volume), a decline of \$4.84 per share or 18%. These drops removed the inflation from Kodak's stock price, causing real economic loss to investors who had purchased the stock during the Class Period. In sum, as the truth about defendants' fraud and Kodak's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock and plaintiff and other members of the Class were damaged, suffering economic losses of at least \$8 per share.

65. The 10% decline in Kodak's stock on June 18, 2003 and the 18% decline in Kodak's stock price at the end of the Class Period were direct results of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of Kodak's stock price declines negate any inference that the loss suffered by plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company specific facts unrelated to the defendants' fraudulent conduct. During the same period in which Kodak's stock price fell as a result of defendants' fraud being revealed, the Standard & Poor's 500 securities index was essentially flat. The economic loss, *i.e.*, damages, suffered by plaintiff and other members of the Class was a direct result of defendants' fraudulent scheme to artificially inflate Kodak's stock price and the subsequent significant decline in the value of Kodak's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

## COUNT I

### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

66. Plaintiff incorporates ¶¶1-65 by reference.

67. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained

misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

68. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Kodak common stock during the Class Period.

69. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Kodak common stock. Plaintiff and the Class would not have purchased Kodak common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

70. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Kodak common stock during the Class Period.

## **COUNT II**

### **For Violation of §20(a) of the 1934 Act Against All Defendants**

71. Plaintiff incorporates ¶¶1-70 by reference.

72. The Individual Defendants acted as controlling persons of Kodak within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors of Kodak, and

their ownership of Kodak stock, the Individual Defendants had the power and authority to cause Kodak to engage in the wrongful conduct complained of herein. Kodak controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and Kodak are liable pursuant to §20(a) of the 1934 Act.

### **CLASS ACTION ALLEGATIONS**

73. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Kodak common stock on the open market during the Class Period (the “Class”). Excluded from the Class are defendants.

74. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of October 2004, Kodak had more than 286 million shares of stock outstanding, owned by hundreds if not thousands of persons.

75. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the price of Kodak common stock was artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

76. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

77. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to FRCP 23;
- B. Awarding plaintiff and the members of the Class damages, interest and costs;
- C. Awarding plaintiff reasonable costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: June 10, 2005

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